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THE

NEW ORDERS

FOR THE REGULATION OF

THE PRACTICE AND PROCEEDINGS

OF THE

COURT OF CHANCERY.

ISSUED BY THE

LORD HIGH CHANCELLOR,

26*th* AUGUST, 1841.

WITH REMARKS ON THEIR EFFECT ON THE PRESENT PRACTICE OF THE COURT.

AND SOME SUGGESTIONS FOR REFORMING THE SAID COURT.

BY JOHN SIDNEY SMITH,
OF THE SIX CLERKS' OFFICE.

LONDON:
SAUNDERS AND BENNING, LAW BOOKSELLERS,
(SUCCESSORS TO J. BUTTERWORTH AND SON,)
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PREFACE.

In submitting the observations on the probable effects of these Orders on the practice of the Court, the writer is under considerable anxiety lest their purport should be misunderstood. Emanating, as these Orders do, from such high authority, he felt much diffidence in offering any opinion upon their practical operation; but fully persuaded that the Judges, with whom they originated, were only actuated by a desire of reforming the abuses of the Court of Chancery, he has been encouraged to proceed, in the persuasion that efforts, however humble, having the same direction, will neither be deemed impertinent nor obtrusive. Re-assured by this feeling, he has expressed his opinion of the probable working of these Orders with the same freedom and unreserve as if they had not yet been published, and were under his consideration with a desire that any defects in their practical application to existing abuses might be pointed out.

ORDER OF COURT.

26th August, 1841.

THE Right Honorable CHARLES CHRISTOPHER LORD COTTENHAM, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honorable HENRY LORD LANGDALE, Master of the Rolls, Doth hereby, in pursuance of an Act of Parliament, passed in the fourth year of the reign of Her present Majesty, intituled "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an Act passed in the fourth and fifth years of the reign of Her present Majesty, intituled, "An Act to amend an Act of the Fourth Year of Her present Majesty, intituled 'An Act for facilitating the administration of Justice in the Court of Chancery,'" order and direct in manner following: that is to say—

I. THAT there shall forthwith be prepared a proper Alphabetical Book for the purposes after mentioned, and that such book shall be called the Solicitors' Book, and shall be publicly kept at the Office of the Six Clerks, to be there inspected without fee or reward.

II. THAT every Solicitor, before he practice in this Court, in his own name solely, and not by an Agent,

whose name shall be duly entered as after mentioned, and every Solicitor, before he practice as such Agent, shall cause to be entered in the Solicitors' Book, in alphabetical order, his name and place of business or some other proper place in London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications in causes and matters depending in this Court: and as often as any such Solicitor shall change his place of business or the place where he may be served as aforesaid, he shall cause a like entry thereof to be made in the Solicitors' Book, and that the above mentioned entries shall be made in such book by the said Six Clerks, who shall be entitled to a fee of one shilling for every such entry; and that the fund arising from such payment shall be applied, in the first instance, in paying the expenses of providing and keeping such book.

III. That all writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, which do not require personal service upon the party to be affected thereby, shall be deemed sufficiently served if such document, or a copy thereof, as the case may be, shall be left at the place lastly entered in the Solicitors' Book by the Solicitor of such party; and if any Solicitor shall neglect to cause such entry to be made in the Solicitors' Book as is required by the Second Order, then the fixing up a copy of any such writ, notice, order, warrant, rule, or other document, proceeding, or written communication for such Solicitor in the said Six Clerks' Office, shall be deemed a sufficient service on him, unless the Court shall, under special circumstances, think fit to direct otherwise.

IV. That if any Solicitor shall give his consent in writing that the service of all or any writs, notices, orders, warrants, rules, or other documents may be made upon him through the Post-office or otherwise, such service shall be deemed sufficient if made in such manner as such Solicitor shall have so agreed to accept; but it shall be competent for any Solicitor giving such consent, at any time to revoke the same by notice in writing.

V. That no person shall be allowed to appear or act, either in person, by Solicitor or Counsel, or to take any proceedings whatever in this Court, either as plaintiff, defendant, petitioner, respondent, party intervening, or otherwise, until an entry of the name of his Solicitor and his Solicitor's Agent, if there be one, or if he act in person, his own name and address for service shall have been made in the Solicitors' Book at the office of the Six Clerks; but if such address of any person so acting in person, shall not be within London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, then all services upon such person not requiring to be made personally, shall be deemed sufficient if a copy of the writ, notice, order, warrant, rule, or other document to be served, be transmitted to him through Her Majesty's Post-office, to such address as aforesaid. (*a*)

VI. That no Writ of Attachment with proclamations, nor any Writ of Rebellion, be hereafter issued for the purpose of compelling obedience to any process, order, or decree of the Court. (*b*)

VII. That no order shall hereafter be made for a messenger, or for the Serjeant-at-arms, to take the body of the defendant, for the purpose of compelling him to appear to the Bill. (*c*)

(*a*) See Appendix A. p. 1.
(*b*) Ibid. p. 13.
(*c*) See Appendix C. p. 14.

VIII. That if the defendant, being duly served with a subpœna to appear to and answer the Bill, shall refuse or neglect to appear thereto, the plaintiff shall, after the expiration of eight days from such service, be at liberty to apply to the Court for leave to enter an appearance for the defendant. And the Court, being satisfied that the subpœna has been duly served, and that no appearance has been entered by the defendant, may give such leave accordingly; and that thereupon the plaintiff may cause an appearance to be entered for the defendant. And thereupon such further proceedings may be had in the cause as if the defendant had actually appeared. (*d*)

IX. That upon the Sheriff's return, *non est inventus*, to an attachment issued against the defendant for not answering the Bill, and upon affidavit made that due diligence was used to ascertain where such defendant was at the time of issuing such writ, and in endeavouring to apprehend such defendant under the same; and that the person suing forth such writ verily believed, at the time of suing forth the same, that such defendant was in the county into which such writ was issued, the plaintiff shall be entitled to a Writ of Sequestration in the same manner that he is now entitled to such writ, upon the like return made by the Serjeant-at-arms. (*e*)

X. That no Writ of Execution, nor any Writ of Attachment shall hereafter be issued for the purpose of requiring or compelling obedience to any order or decree of the High Court of Chancery; but that the party required by any such order to do any act, shall, upon being duly served with such order, be held bound to do such act in obedience to the order. (*f*)

XI. That if any party who is by an order or decree

(*d*) See Appendix D. p. 14.
(*e*) Ibid. E. p. 18
(*f*) See Appendix F. p. 19.

ordered to pay money, or do any other act, in a limited time, shall, after due service of such order, refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such order shall, at the expiration of the time limited for the performance thereof, be entitled to an order for a Serjeant-at-arms, and such other process as he hath hitherto been entitled to upon a return, *non est inventus*, by the Commissioners named in a Commission of Rebellion issued for non-performance of a decree or order. (*f*)

XII. That every order or decree requiring any party to do an act thereby ordered, shall state the time after service of the decree or order within which the act is to be done; and that upon the copy of the order, which shall be served upon the party required to obey the same, there shall be endorsed a memorandum, in the words or to the effect following; *viz.*—"If you, the within named *A. B.*, neglect to perform this order by the time therein limited, you will be liable to be arrested by the Serjeant-at-arms attending the High Court of Chancery; and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order." (*g*)

VIII. That upon due service of a decree or order for delivery of possession, and upon proof made of demand and refusal to obey such order, the party prosecuting the same shall be entitled to an order for a Writ of Assistance. (*h*)

XIV. That the memorandum at the foot of the subpœna to appear and answer, shall hereafter be in the form following; that is to say,—"Appearances are to be entered at the Six Clerks' Office in Chancery Lane, Lon-

(*f*) See Appendix F. p. 19.
(*g*) Ibid. G. p. 20.
(*h*) See Appendix H. p. 20.

don, and if you do not cause your appearance to be entered within the time limited by the above writ, the plaintiff will be at liberty to enter an appearance for you; and you will be subject to an attachment and the other consequences of not answering the plaintiff's bill, if you do not put in your answer thereto within the time limited by the General Orders of the Court for that purpose."

XV. That every person not being a party in any cause, who has obtained an order, or in whose favour an order shall have been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause against whom obedience to any order of the Court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause. (*i*)

XVI. That a defendant shall not be bound to answer any statement or charge in the Bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the Bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the Bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

XVII. That the interrogatories contained in the interrogating part of the Bill, shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c., and the interrogatories which each defendant is required to answer, shall be specified in a note at the foot of the Bill, in the form or to the effect following; that is to say,—"The defendant (*A. B.*) is

(*i*) See Appendix J. p. 21.

required to answer the interrogatories numbered respectively 1, 2, 3, &c., and the office copy of the Bill taken by each defendant shall not contain any interrogatories, except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole Bill. (*j*)

XVIII. That the note at the foot of the Bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the Bill, and the addition of any such note to the Bill, or any alteration in or addition to such note after the Bill is filed, shall be considered and treated as an amendment of the Bill.

XIX. That instead of the words of the Bill now in use preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore—That the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written, they are respectively required to answer; that is to say,"—

1. Whether, &c. (*j*)
2. Whether, &c.

XX. That a defendant in a country cause shall be allowed no further time for pleading, answering, or demurring to any original or supplemental Bill, or Bill of

(*j*) See Appendix K. p. 21.

Revivor, or to any amended Bill, than is now allowed to a defendant in a town cause. (*k*)

XXI. That after the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to an original Bill, if the defendant shall have filed no plea, answer, or demurrer, the plaintiff shall be at liberty to file a note at the Six Clerks' Office to the following effect:—"The plaintiff intends to proceed with his cause as if the defendant had filed an answer, traversing the case made by the Bill, and the plaintiff had replied to such answer, and served a subpœna to rejoin." And that a copy of such note shall be served on such defendant in the same manner as a subpœna to rejoin is now served, and such note when filed (a copy thereof being so served), shall have the same effect as if the defendant had filed an answer, traversing the whole of the Bill, and the plaintiff had filed a replication to such answer, and served a subpœna to rejoin. And after such note shall have been so filed, and a copy served as aforesaid, the defendant shall not be at liberty to plead, answer, or demur to the Bill without the special leave of the Court. (*l*)

XXII. That a plaintiff shall not be at liberty to file a note under the Twenty-first Order, until he has obtained an order of the Court for that purpose, which order shall be applied for upon motion, without notice, and shall not be made unless the Court shall be satisfied that the defendant has been served with a subpœna to appear and answer the Bill; and that the time allowed to the defendant to plead, answer, or demur, not demurring alone, has expired. (*m*)

XXIII. That where no account, payment, conveyance, or other direct relief is sought against a party to a suit,

(*k*) See Appendix L. p. 22.
(*l*) Ibid. M. p. 22.
(*m*) See Appendix M. p. 22.

it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the Bill. But the plaintiff shall be at liberty to serve such party, not being an infant, with a copy of the Bill, whether the same be an original, or amended, or supplemental Bill, omitting the interrogating part thereof: and such Bill, as against such party, shall not pray a subpœna to appear and answer, but shall pray that such party, upon being served with a copy of the Bill, may be bound by all the proceedings in the cause. But this order is not to prevent the plaintiff from requiring a party against whom no account, payment, conveyance, or other direct relief is sought, to appear to and answer the Bill, or from prosecuting the suit against such party in the ordinary way, if he shall think fit. (*n*)

XXIV. That where a plaintiff shall serve a defendant with a copy of the Bill under the Twenty-third Order, he shall cause a memorandum of such service, and of the time when such service was made, to be entered in the Six Clerks' Office, first obtaining an order of the Court for leave to make such entry, which order shall be obtained upon motion without notice, upon the Court being satisfied of a copy of the Bill having been so served, and of the time when the service was made. (*o*)

XXV. That where a defendant shall have been served with a copy of the Bill, under the Twenty-third Order, and a memorandum of such service shall have been duly entered, and such defendant shall not within the time limited by the practice of the Court for that purpose, enter an appearance in common form, or a special appearance under the Twenty-seventh Order; the plaintiff shall be at liberty to proceed in the cause, as if the party served with a copy of the Bill were not a party thereto, and the party

(*n*) See Appendix N. p. 23. (*o*) See Appendix O. p. 23.

so served shall be bound by all the proceedings in the cause, in the same manner as if he had appeared to and answered the Bill. (*p*)

XXVI. That where a party shall be served with a copy of the Bill under the Twenty-third Order, such party, if he desires the suit to be prosecuted against himself in the ordinary way, shall be entitled to have it so prosecuted; and in that case he shall enter an appearance in the common form, and the suit shall then be prosecuted against him in the ordinary way. But the costs occasioned thereby shall be paid by the party so appearing, unless the Court shall otherwise direct. (*q*)

XXVII. That where a party shall be served with a copy of the Bill under the Twenty-third Order, and shall desire to be served with a notice of the proceedings in the cause, but not otherwise to have the same prosecuted against himself, he shall be at liberty to enter a special appearance under the following form; (that is to say,) "*A. B.* appears to the Bill for the purpose of being served with notice of all proceedings therein." And thereupon, the party entering such appearance shall be entitled to be served with notice of all proceedings in the cause, and to appear thereon. But the costs occasioned thereby shall be paid by the party entering such appearance, unless the Court shall otherwise direct. (*r*)

XXVIII. That a party shall not be at liberty to enter such special appearance under the Twenty-seventh Order, after the time limited by the practice of the Court for appearing to a Bill in the ordinary course, without first obtaining an order of the Court for that purpose; such order to be obtained on notice to the plaintiff, and the

(*p*) See Appendix P. p. 24.
(*q*) Ibid. Q. p. 24.
(*r*) See Appendix R. p. 24.

party so entering such special appearance, shall be bound by all the proceedings in the cause, prior to such special appearance being so entered. (*s*)

XXIX. That where no account, payment, conveyance or other relief is sought against a party, but the plaintiff shall require such party to appear to and answer the Bill, the costs occasioned by the plaintiff having required such party so to appear and answer the Bill, and the costs of all proceedings consequential thereon, shall be paid by the plaintiff, unless the Court shall otherwise direct. (*t*)

XXX. That in all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit. But the Court may upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

XXXI. That in suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him. (*u*)

XXXII. That in all cases in which the plaintiff

(*s*) See Appendix S. p. 24.
(*t*) Ibid. T. p. 24.
(*u*) See Appendix U. p. 24.

has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable. (*v*)

XXXIII. That where a demurrer or plea to the whole Bill shall be overruled, the plaintiff, if he does not require an answer, shall be at liberty immediately to file his note in manner directed by the Twenty-first Order, and with the same effect, unless the Court shall, upon overruling such demurrer or plea, give time to the defendant to plead, answer, or demur; and in such case, if the defendant shall file no plea, answer, or demurrer, within the time so allowed by the Court, the plaintiff, if he does not require an answer, shall, on the expiration of such time, be at liberty to file such note. (*w*)

XXXIV. That where the defendant shall file a demurrer to the whole Bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within twelve days from the expiration of the time allowed to the defendant for filing such demurrer, cause the same to be set down for argument: and where the demurrer is to part of the Bill, the demurrer shall be held sufficient, and the plaintiff be held to have submitted thereto, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such last mentioned demurrer, cause the same to be set down for argument. (*x*)

XXXV. That where the defendant shall file a plea

(*v*) See Appendix V. p. 25.
(*w*) Ibid. W. p. 25.
(*x*) See Appendix X. p. 25.

to the whole or part of a bill, the plea shall be held good to the same extent and for the same purposes as a plea allowed upon argument, unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such plea, cause the same to be set down for argument, and the plaintiff shall be held to have submitted thereto. (*y*)

XXXVI. That no demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the Bill as it might by law have extended to. (*z*)

XXXVII. That no demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea. (*z*)

XXXVIII. That a defendant shall be at liberty by answer to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer; and that he shall be at liberty so to decline, notwithstanding he shall answer other parts of the Bill from which he might have protected himself by demurrer. (*z*)

XXXIX. That where the defendant shall, by his answer, suggest that the Bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the Registrar's Book, in the form or to the effect following; (that is to say,) "Set down upon the defendant's objection for want of parties;" and that where the plaintiff shall not so set down his

(*y*) See Appendix Y. p. 25. (*z*) See Appendix Z. p. 26.

cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course, to an order for liberty to amend his Bill by adding parties; but the Court, if it thinks fit, shall be at liberty to dimiss the Bill. (*a*)

XL. THAT if a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties. (*b*)

XLI. THAT where a defendant in equity files a cross Bill against the plaintiff in equity for discovery only, the costs of such Bill, and of the answer thereto, shall be in the discretion of the Court at the hearing of the original cause. (*c*)

XLII. THAT where a defendant in equity files a cross Bill for discovery only against the plaintiff in equity, the answer to such cross Bill may be read and used by the party filing such cross Bill, in the same manner, and under the same restrictions, as the answer to a Bill praying relief may now be read and used. (*d*)

XLIII. THAT in cases in which any exhibit may by the present practice of the Court be proved *vivâ voce* at the hearing of a cause, the same may be proved by the affidavit of the witness who would be competent to prove the same *vivâ voce* at the hearing. (*e*)

XLIV. THAT where a defendant makes default at the

(*a*) See Appendix A. A. p. 26.
(*b*) Ibid. B. B. p. 26.
(*c*) Ibid. C. C. p. 26.
(*d*) See Appendix D. D. p. 26.
(*e*) Ibid. E. E. p. 26.

hearing of a cause, the decree shall be absolute in the first instance, without giving the defendant a day to show cause, and such decree shall have the same force and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shown by the defendant. (*f*)

XLV. That every decree for an account of the personal estate of a testator or intestate shall contain a direction to the Master to inquire and state to the Court what parts (if any) of such personal estate are outstanding, or undisposed of, unless the Court shall otherwise direct. (*g*)

XLVI. That a creditor, whose debt does not carry interest, who shall come in and establish the same before the Master, under a decree or order in a suit, shall be entitled to interest upon his debt, at the rate of £4 per cent. from the date of the decree, out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest. (*h*)

XLVII. That a creditor who has come in and established his debt before the Master under a decree or order in a suit, shall be entitled to the costs of so establishing his debt, and the same shall be taxed by the Master, and added to the debt. (*i*)

XLVIII. That in the reports made by the Masters of the Court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer, shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, affi-

(*f*) See Appendix F. F. p. 27.
(*g*) Ibid. G. G. p. 27.
(*h*) See Appendix. H. H. 27.
(*i*) Ibid. J. J. p. 27.

davit, deposition, examination, or answer, were so brought in or used. (*k*)

XLIX. That it shall not be necessary in any Bill of Revivor, or supplemental Bill, to set forth any of the statements in the pleadings in the original suit, unless the special circumstances of the case may require it.

L. That in any petition of rehearing of any decree or order made by any Judge of the Court, it shall not be necessary to state the proceedings anterior to the decree or order appealed from, or sought to be reheard.

LI. That the foregoing Orders shall take effect as to all suits, whether now depending, or hereafter commenced on the last day of Michaelmas Term, One thousand eight hundred and forty-one.

COTTENHAM, C.
LANGDALE, M.R.

(*k*) See Appendix K. K. p. 27.

APPENDIX.

(A. Orders Nos. I. II. III. IV. V.)—No person is to appear, or act, either in person, or by Solicitor or Counsel, or to take any proceeding whatever in the Court of Chancery, either as plaintiff, defendant, petitioner, respondent, party intervening or otherwise, until an entry of the name of his Solicitor, or his Solicitor's agent, if there be one, or if he act in person, his own name and address shall have been made (5th Order) in an alphabetical book kept for that purpose at the Six Clerks' Office; and every Solicitor, before he practises in the said Court, either in his own name, solely, and not by an agent, or as such agent, is to cause to be entered in such Alphabetical Book so kept for that purpose at the Six Clerks' Office as aforesaid, his name and place of business, or some other proper place in London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, where he may be served with the documents mentioned in the Orders, II. and III.; and as often as he shall change his place of business, or the place where he may be served, he is to cause a like entry to be made in such book, and the aforesaid documents (where personal service is not required) are deemed sufficiently served, if the document or a copy thereof, as the case may be, is left at the place lastly entered in such book; but, if any Solicitor neglects to cause such entry to be made, then the fixing up a copy of such document shall

be deemed a sufficient service on him, unless the Court, under special circumstances, shall think fit to direct otherwise.

These documents may also, by the consent in writing of any Solicitor, be served upon him through the Post-office, or otherwise, as may be agreed upon, such consent being at any time revocable by a like notice in writing. If the address of one acting in person is not within London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, (the services in such case not requiring to be made personally), are deemed sufficient, if made through the Post-office.

By the present practice subpœnas to appear to an amended bill, to rejoin and to hear judgment; warrants, orders and notices of motion (not requiring personal service on a party) petitions, notes of attachment, of rules having been entered to produce and to pass publication, and a variety of other written communications are served on the Clerks in Court. The central position of the Six Clerks' Office, as regards the general body of London Solicitors, and its contiguity to the other offices of the Court of Chancery, have rendered such a mode of service generally acceptable to the profession, and several witnesses examined before the commissioners in 1824, testified as to its convenience. If a warrant is taken out, attendance for that purpose is required in Southampton Buildings; if minutes, or a decree or order are to be obtained, they must be sought for at the Registrar's Office in Chancery Lane; in all these cases the Six Clerks' Office presents, from its position, the greatest facilities for service; in the one instance of the warrant; in the other, of the notice to settle the minutes, or to pass the order or decree.—In addition to its position the Six Clerks' Office also possesses the advantages of books of easy reference, shewing on whom the service requires to be made.

It is proposed to consider the alterations made by these Orders as regards the question of service in three points of view; 1st, as to the facilities of service; 2nd, as to expense; 3rd, as to the security that the thing served will reach

its intended destination. First, as to the facilities of service: at present, suppose a clerk to have taken out a warrant at the Master's Chambers, requiring to be served on three parties, (the average number); he crosses over to the Six Clerks' Office, fills up three blank copies of the warrant, learns from his own clerk in Court on which of the other clerks in Court these three copies are to be served, and effects the service with the least possible delay. At the close of the business of the Six Clerks' Office, and when the constant interruptions arising from the continued inquiries made by the Solicitors and their clerks have ceased, the documents which have been served during the day, are directed and forwarded to their proper destinations. To those familiarly acquainted with the numerous suits conducted at the respective seats of the Clerks in Court, this business is despatched with great readiness; but, whenever the parties usually attending to this department are accidently absent, and this duty devolves upon others, who, although daily in attendance at the seat, are less familiar with the names of the suits and the parties, the search has been found both irksome and tedious. The service of a warrant has been referred to as one example, but the above remarks apply equally to the cases of other services. It is not unusual, shortly before the close of the office, to see the same clerks of some of the leading agency offices in London making their accustomed services of writs, warrants, orders, notices, &c. which are despatched by them with the least possible delay.

It has been explained in what manner a warrant is now served on three parties. Let us anticipate the course under these new Orders. The Clerk must attend at the Master's Chambers to take out his warrant, and he must fill up his copies; the chances are, that he will then have to cross to the Six Clerks' Office to consult the Clerk in Court's Book, on whom he is to make the services; and when he has obtained this information, instead of concluding his labours by leaving copies of the warrants at the seats of

the respective Clerks in Court, he may, and probably will have to apply to each of the seats of these Clerks in Court for the name of the Solicitor for whom each is respectively concerned. This will practically cause much delay; for although the party applied to may be satisfied that he is engaged in the cause inquired after, he may not be able to name for what party or for what Solicitor he acts, without a reference to his book; and the Solicitor's clerk, therefore, instead of obtaining the prompt off-hand answer which can now be given, and leaving his warrant without interrupting the attention perhaps at that moment occupied with a prior claimant, must wait his turn before the book of reference can be consulted. With this information the clerk hastens to the Alphabetical Book, called the Solicitor's Book; and as the legal profession, partaking of human infirmity, are sometimes given to procrastination (as witness the never-failing press of business at the eve of every long vacation), it is not unreasonable to suppose that at many seasons of the year it may be a matter of scramble amongst the thousands of Solicitors and their clerks and assistants to get a sight of this much sought after book. Imagine the dismay of the Solicitor's clerk at the very moment he is congratulating himself on obtaining the sought-for information, on ascertaining from the Alphabetical Book that the Solicitor of defendant A. lives in Piccadilly, of defendant B. in Southwark, and of defendant C. in Parliament-street.

It may be answered that a Solicitor can so keep his own cause-book that he will not have to apply for information to the Clerk in Court; that this will be so generally is very doubtful; and in the case of a new Solicitor coming into a cause, or of Solicitors for creditors or purchasers, or those not parties to the suit, the original objection remains in full force. But admitting that in all cases it will be unnecessary to consult the Clerk in Court's book, it still leaves the other objections unanswered, and imposes on the practitioner, who avails himself of this mode of service, much additional trouble and a larger expenditure of time.

2ndly. The next point is the consideration of the comparative expense of the two systems. The fee allowed for each copy and service of a warrant is 1*s.* 6*d.* on the Clerk in Court, and 2*s.* 6*d.* on the Solicitor; of an order or notice of motion or petition, 2*s.* on the Clerk in Court, and 2*s.* 6*d.* on the Solicitor. By a return to the House of Commons, it appears that about 60,000 warrants are taken out annually from the different Masters' Offices; and it has been estimated that each warrant returns an average of about two and a half services, giving an excess of expense for each service made on the Solicitor of 1*s.* beyond that incurred by a service on the clerk in Court; and such services of warrants averaging every year about 150,000, gives, as the annual excess of expense of the services of warrants on Solicitors, beyond that of services on the Clerk in Court, the sum of 7,500*l.* In the taxation of the costs of a suit which, some years back, from their amount, created much conversation in the profession, the excess of expense on one taxation only, of services of warrants on the Solicitors instead of the Clerk in Court, (each warrant being served on thirteen parties) would have amounted to about £50. The difference of expense with regard to services of notices of motion and of orders and petitions will also be very considerable, although there are no means of arriving at an accurate result of the amount.

Again, notices of settling minutes, of passing orders and decrees, and notices of a similar nature, are served on the Clerk in Court, and no fee is allowed at all for such services; whereas, if served on the Solicitor, some remuneration must be made. It is conceived, as the ground why no allowance is made for such services, as well as the fact of so few fees being given by the Court for attendance at the Six Clerks' Office, arises from the circumstance of a Solicitor's business necessarily carrying him there so frequently at all stages of the suit, thereby pointing out such office as the fittest medium for service of all documents not requiring personal service.

3rdly. The next, and perhaps the most important consideration is, which system is best calculated to insure the greatest accuracy in the service, and the least intricacy or difficulty in proving the same? Nothing can be more simple than the system of services through the Clerk in Court; and if a warrant or other document miscarries, it forms an exception to the generally admitted correctness by which such transmissions are now made.

From the previous statement of the number of warrants taken out annually from the Masters' Offices, and from reflecting on the amount of writs, orders, petitions, notices of motions, and other documents served through the Clerk in Court, some slight idea of the number of documents transmitted through the Six Clerks' Office may be formed, and the Judges and the Bar may be fairly called as witnesses to prove on how few occasions, compared to the amount of services, the question of the regularity of a service has been brought to the attention of the Court.

Not only is the transmission of documents served secure and regular, but the proof of service is easily established, and of familiar application with the Registrars and other Officers of the Court who have to act upon such proofs; and if a service is disputed, this mode of transmission affords a means of testing where the blame lies; for on reference to the seat at which the service is alleged to have been made, if admitted, it may be ascertained whether the neglect arose in the transmission of the document, or whether the same has been overlooked at the Solicitor's Office.

Let us consider the proposed alterations in these twofold points of view:—A service is deemed sufficient if made by leaving the document, or a copy, at the place lastly entered on the Solicitor's books by the Solicitor of such party; or if any Solicitor shall neglect to cause such entry to be made in the Solicitors' Book, as required by the second of the said Orders, then the fixing up a copy of any document for such Solicitor in the Six Clerks' Office,

is to be deemed sufficient service on him, unless the Court shall think fit, under the special circumstances, to direct otherwise (Order III.); or, by written consent, these documents may be served through the Post (Order IV.); or if a person, acting for himself, shall give an address not within London, Westminster, or the Borough of Southwark, or within two miles of Lincoln's Inn Hall, then all services on such person not requiring to be made personally, shall be deemed sufficient, if a copy thereof be transmitted through the Post-office to such address as aforesaid (Order V.)

With respect to the two first modes of service, *viz.*, the one on the Solicitor, and the other to be effected by fixing up a copy at the Six Clerks' Office, it may be observed that the number of Clerks in Court is small, and their place of being served, and their hours of attendance (*a*) fixed, but that the Solicitors are a numerous body, and their residences are constantly changing. The death of the Solicitor, the dissolution of a partnership, the change of the Solicitor during the suit, or his negligence in not registering his change of residence, may any of them prevent a document served from reaching its destination; proceedings involving serious results may be formed upon such services; and the Courts will be liable to be constantly applied to, and occupied to remedy the consequences arising from these casualties.

The object of the Clerk in Court is, that the service in all cases should be effectual; but it may easily be supposed that there are over-zealous or under-scrupulous practitioners, who, when a march is to be stolen upon their adversary, would rather comply with the letter than with the spirit of the law, and who, instead of endeavouring to make a good service, would avail themselves of the remissness of the adverse Solicitor in not entering

(*a*) If the service on Solicitors becomes general, it will be necessary to fix the hours within which such services are to be made.

his name in the Solicitor's book, and effect a service by sticking up the document at the Six Clerks' Office, or in any other manner most conducive to their purpose.

The Registrar will require proof that the place where the service was effected, was at the place lastly entered on the Solicitor's book by the Solicitor of such party, and probably that such Solicitor continues to act for the same party.

With respect to the mode of serving a solicitor who neglects to cause the required entry to be made in the Alphabetical Book, by fixing up a copy of the document in the Six Clerks' Office, and which is to be deemed good service, unless the Court think fit, under special circumstances, to order otherwise, many inquiries suggest themselves. Will it be necessary in every case to substantiate this service by an order of the Court, or is the service to be held good unless the Court direct otherwise? What is the nature of the special circumstances; and in what manner, at what time, and by what party, are they to be brought to the attention of the Court. An attachment for want of appearance or answer to an amended bill is issued by the plaintiff's Clerk in Court, without order on an affidavit of the service of the subpœna; this service may, in a case where the Solicitor neglects to enter his name, be made by fixing up the copy of the subpœna in the Six Clerks' Office. Is the Court to be appealed to at all, or is the Clerk in Court, waiving special circumstances, to issue a writ, and if so, is he to be satisfied with the affidavit of fixing up a copy of the subpœna, and of the non-entry of the Solicitor's name, or is it expected that he personally should satisfy himself of such non-entry? And suppose an error, either in the party making the entry, or by a too hasty search, against whom is the action for false imprisonment to be brought? Again, take the case of a Solicitor concerned for one of many defendants, who has been guilty of omitting to register his name, and assume that the plaintiff applies for an order absolute to confirm a report which is

a motion as of course, and that the order *nisi* as to such negligent Solicitor has been served by affixing a copy thereof at the Six Clerks' Office. Is this motion as of course to be converted into a special motion as against this one defendant, and are the special circumstances of the service to be disposed of before the motion can be heard? or take the case of a defendant having so served a negligent plaintiff's Solicitor with an order *nisi* to dissolve an injunction. Is such defendant to instruct his Counsel to be prepared to sustain such service as a preliminary to the usual motion of course; and is it to be so, in the case of payment or transfer of money or stock, or the deposit of books and papers. Suppose a subpœna to hear judgment to have been served on a defendant by fixing up a copy; when the cause is ripe for hearing, if such defendant make default are the special circumstances of the service to be discussed before the cause is allowed to proceed? and if the Court think fit to make order against the service, is the plaintiff to go through his process again, and are the co-defendants to have their cause delayed? Before a plea or demurrer, a petition, or motion, an original cause, or one on farther direction can be heard, will it be competent for the negligent party to show special cause against the service? Did the Court contemplate that the Serjeant-at-arms would be able take a party into custody whose only notice of the order *nisi* has been that the same has been stuck up for four days in the Six Clerks' Office, surrounded, and perhaps obscured by the mass of other neglected notices.

With respect to transmitting notices by the post the alteration is only partial. It has been and is now very usual for Solicitors, who have confidence in each other, to agree to make their services, either wholly, or in particular causes, through the medium of the Post-office, and so long as they preserve their integrity (and the instances of violation are very rare) every advantage was obtained which is afforded by these new Orders. But if the Solicitor proved faithless to his agreement, the Court, although it would punish the So-

licitor, would not recognize the service; whereas by these orders if a Solicitor gives his consent in writing that the service of the documents may be made through the Post-office such service is deemed sufficient, if made in such manner as such Solicitor has so agreed to accept, but it is competent for any Solicitor giving such consent at any time to revoke the same by notice in writing. It is, therefore, clear that this rule has nothing to do with men of honourable dealing, men who consider themselves bound by arrangements entered into by them, but which cannot legally be enforced: it only operates upon those who having agreed to abide by a certain service would repudiate it unless the same could be legally enforced. In considering the New Rules it will only be necessary to regard its application to the cases of Solicitors who neither denying an arrangement as to the mode of service, nor the compliance of the opposite party with the terms of such compact, yet refuse to be bound by it, on the ground of the inability of the other party to enforce it.

Is a service through the Post-office likely to prove efficacious in dealing with such persons? Will they not evade the rule as easily as they would have avoided their compact? Before these Orders, parties would not have trusted them; now, perhaps, they may, thinking that by their aid they may be enabled to bind them. In how many ways may they not evade these Orders? Suppose a Solicitor to consent to accept service by the post, and afterwards cease to be concerned in the cause, and to give no notice to the opposite party of his withdrawal, and an important service to be made after he has ceased to be concerned, will his consent bind his successor, or is the party serving to lose the benefit of his process, or is the question of the time of the withdrawal to be put in issue? Suppose a notice really to miscarry, or a party to allege that it never reached him, or that he had previously given a notice of revocation, may not much valuable time be expended to collect the truth from a mass of contradictory affidavits,

and counter affidavits to enable the Court to decide upon priorities of service or countermands. Again, suppose a mutual agreement to transmit, by post, between plaintiff's and defendant's Solicitors, and that one of them revoke the consent, and not finding the name of the opposite Solicitor in the Alphabetical Book, serves a document, by fixing it up at the Six Clerks' Office.

As almost every service requires to be made within a given time before the next proceeding, is the service to be reckoned from the time of posting the document, or from the time when it is received ? And if the latter, how is the party posting the notice to prove the time of delivery ? The Registrar, in drawing up an order on affidavit of service by post, will require proof of an agreement that the service was to be made through the post; that the terms of that agreement have been complied with, and that the consent has not been revoked, and that the document was not only posted, but received in due time.

In considering the question of proving service, it may be asked, how far the cautious conveyancer will feel satisfied in approving a purchase where the service of the order *nisi* confirming the same has been made through the Post-office, or by fixing up a copy thereof at the Six Clerks' Office.

To the greater portion of the profession, the last mentioned alteration of legalizing the service through the post, offers no advantage over the present practice, and it is to be feared, that the order is not of such a nature as to operate with effect on an evasive practitioner.

These different modes of service may, in many instances lead to vexatious questions on the taxation of costs. Can a party sending by the post, if an objection is taken, sustain a charge for service beyond the postage; and if he can, at what rate? And will not the party claiming the enlarged fee for service on the Solicitor be bound in every instance, if required by the party paying the costs, to prove that such service was so made.

A further objection exists; at present nearly all services are effected through one office, and the machinery of that office is equal to their due transmission. If the present alterations should ever come into active operation, the call for the exercise of this machinery, will, in a great measure, cease, and its efficacy be proportionably decreased, even this order still leaves a variety of services which must be made through their ancient channel. Amongst these are all the notices served from the examiners of the name and abode of the witnesses tendered to them for cross examination; notices that decrees have been presented for enrolment; rules to produce witnesses and to pass publication; notes calling for security for costs; notes of attachment for want of answers; notices of every appearance entered by a defendant of every answer, or disclaimer, of every replication, plea, or demurrer filed; notes calling upon parties to join in commissions, and to strike commissioners' names, and a variety of other written communications of a similar nature.

It may be urged that the mode of services prescribed by these Orders, is not compulsory, and that there is nothing contained in them to prevent parties availing themselves of the old system of services through the Clerk in Court, but considering the expense and trouble of the Solicitors' Book, and the confusion incident upon a two-fold mode of service, the point is not likely to be urged. In a mercantile view, it certainly possesses this advantage, that where the services are to be made at distantly situated places, the easiest mode can be resorted to, whereas if the parties to be served live near each other then the more profitable course can be adopted. In the progress of a suit it often happens that warrants are taken out "to justify," that is, if Solicitors go through a report at home or at their respective offices, the length of which would carry eight warrants, and only two have been exhausted at the Master's Chambers, it is the practice to take out the remaining six warrants to justify their attendance; the more

profitable fee for serving these warrants will generally, (especially if the parties to be served are numerous), afford a remunerating return for the increased trouble.

In what manner is the fifth Order to be enforced? Suppose a bill or appearance to be tendered, is it competent to the Officer of the Court to refuse to file the one or enter the other until he has satisfied himself that the person applying is within the pale of this rule? Is the Counsel, before he applies for an injunction, or to dissolve one; for a writ of *ne exeat*, or to discharge it, to satisfy himself that the party instructing him, has by the fifth Order, entitled himself to sue or to be sued; and what amount of evidence is to be considered satisfactory? Is the Clerk of the Subpœna Office, in an injunction suit (the subpœna then being usually the first process), to withhold the writ until he has satisfied himself that this Order has been complied with? And, in any of the above mentioned cases, what is the penalty of unintentional disobedience to the rule, and on whom is it to fall? Suppose, in the hurry of business, an injunction should be obtained, and this rule not have been complied with, is the injunction bad; and can a party guilty of a breach of it be committed? Is an attachment for non-appearance issued by a plaintiff under such circumstances irregular, and could an action be sustained for issuing it? How is a contumacious defendant, upon being brought up by habeas, who opposes everything, to be dealt with under this order?

(B. VI.)—An attachment, with proclamation and a commission for rebellion, were required in certain cases, as preliminary steps to taking a bill *pro confesso*, for want of answer, and to issuing a sequestration for non-performance of a decree or order. The object of the alteration is to remedy the delay occasioned by these processes to a party prosecuting a contempt; but it seems doubtful whether this Order will not altogether prevent a plaintiff taking a bill *pro confesso*, under what is called the old practice, *viz.*, in a case where the statute does not apply.

The process was, attachment—attachment with proclamation, commission of rebellion, Serjeant-at-arms, sequestration, order to take bill *pro confesso*. On the return of the attachment *non est inventus*, the two next steps cannot issue, being prohibited by this Order; and the provision made by the ninth of these Orders does not meet this case, nor does there appear to be anything to warrant a Serjeant-at-arms proceeding on the return of the attachment *non est inventus*, unless the conditions mentioned in the ninth Order can be complied with; the plaintiff thereby losing the remedy he formerly possessed of taking the bill *pro confesso*, under the old practice.

(C. VII.)—A plaintiff might proceed against a defendant for non-appearance; 1st, when he absconded, by taking the bill *pro confesso* against him under the statute; 2ndly, by attachment and the subsequent processes of contempt to sequestration. If the defendant was not taken there the remedy stopped, unless the case came within the statute, but if taken on any of the processes in certain cases he was brought up by a Messenger, in others by habeas corpus, and when brought up, an order was made for the Clerk in Court to appear for him. But the simplest way when he was in custody was, not to incur the expense of bringing him up at all, but to serve him with a notice, requiring him to appear pursuant to 1 Wm. 4, c. 36, and on non-compliance, to obtain an order of course for a Clerk in Court to appear for him. That part of the Order which relates to the Messenger will confine the remedy of a plaintiff against an infant defendant to that given him of entering his appearance for such infant under the eighth Order; formerly an attachment was issued, but not executed, and thereupon a Messenger was ordered.

(D. VIII.)—This Order may be regarded as affecting a fundamental change in the constitution of the Court. Previous to 5 Geo. 2, c. 25, the Court possessed no authority to enter an appearance for a defendant, and the

power conferred by that Act was confined to the case of a defendant brought into Court in custody, and 1 Wm. 4, c. 36, did not extend the jurisdiction of the Court beyond the cases of defendants in custody. The 8th Rule, coupled with some of the subsequent Orders, particularly the 21st, confers upon the Court all the power which was possessed as against a defendant served with subpœna, and proved to have absconded to avoid the subsequent process. Even as against a defendant so proved to the satisfaction of the Court to have absconded, an Order is made appointing a day for him to appear, which is inserted in the *Gazette* and read in the Parish Church, and a copy posted at the Royal Exchange before the bill can be taken *pro confesso* against him; and even then it is provided that upon the bill being taken *pro confesso*, the Court may issue process to compel the performance of such decree, either by an immediate sequestration of the real and personal estate and effects of the party so absenting (if any such can be found), or such part thereof as may be sufficient to satisfy the demands of the plaintiff in the said suit, or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff, or otherwise, as the nature of the case shall require; and the said Court may likewise order such plaintiff to be paid and satisfied his demands out of the estate or effects so sequestered, according to the true intent and meaning of such decree, *such plaintiff first giving sufficient security in such sum as the Court shall think proper, to abide such order touching the restitution of such estate or effects as the Court shall think proper to make concerning the same*, upon the defendant's appearance to defend such suit and paying such costs to the plaintiff as the Court shall order; but in case such plaintiff shall refuse or neglect to give such security as aforesaid, then the said Court shall order the estate or effects so sequestered, or whereof the possession shall be decreed to be delivered, to *remain under the direction of the Court either by appointing a receiver thereof, or otherwise, as to such*

Court shall seem meet, until the appearance of the defendant to defend such suit, and his paying such costs to the plaintiff as the said Court shall think reasonable, or until such Order shall be made therein as the Court shall think just. 1 Wm. 4, c. 36, s. 3.

If any person against whom any decree shall be made, upon refusal or neglect to enter his appearance, or appoint a Clerk in Court or Attorney to act in his behalf, shall be in custody or forthcoming, so that he may be served with a copy of such decree, then he shall be served with a copy thereof before any process shall be taken out to compel the performance thereof, 1 Wm. 4, c. 36, s. 4.

If any decree shall be made in pursuance of the said Act against any person being out of the realm, or absconding as therein mentioned at the time such decree is pronounced, and such person shall, within seven years after the making such decree, return or become publicly visible, then, and in such case he shall likewise be served with a copy of such decree within a reasonable time after his return or public appearance shall be known to the plaintiff; and in case any defendant against whom such decree shall be made, shall, within seven years after the making such decree, happen to die before his or her return into his realm, or appearing openly as aforesaid, or shall within the time last before mentioned, die in custody before his or her being served with a copy of such decree, then his or her heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff, and such heir may be found; or if such heir shall be a feme covert, infant, or *non compos mentis*, the husband, guardian, or committee of such heir respectively; or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff, then his executor or administrator (if any such there be) may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff that the defendant is dead,

and who is his heir, executor, or administrator, or where he may be served therewith. 1 Wm. 4, c. 36, s. 5.

If any person so served with a copy of such decree shall not, within six months after such service, appear and petition to have the said cause reheard, such decree so made as aforesaid shall stand absolutely confirmed against the person so served with a copy thereof, his heirs, executors, and administrators, and all persons claiming or to claim by, from, and under him or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit. 1 Wm. 4, c. 36, s. 6.

If any person so served with a copy of such decree, shall within six months after such service, or if any person not being so served, shall within seven years next after the making such decree, appear in Court and petition to be heard with respect to the matter of such decree, and shall pay down or give security for payment of such costs as the Court shall think reasonable in that behalf, the person so petitioning, or his representatives, or any person claiming under him by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree, and execution may be had thereon, as there might have been in case the same party had originally appeared, and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause. 1 Wm. 4, c. 36, s. 7.

If any person against whom such decree shall be made, his heirs, executors, or administrators, shall not, within seven years next after the making of such decree, appear and petition to have the cause reheard, and pay down or give security for payment of such costs as the Court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person against whom such decree shall be made, his heirs, executors, and administrators, and against all persons claim-

ing or to claim by, from, or under him or any of them, by virtue of any act done, or to be done subsequent to the commencement of such suit; and at the end of such seven years, it shall and may be lawful for the Court to make such further Order as shall be just and reasonable, according to the circumstances of the case. 1 Wm. 4, c. 36, s. 8.

So much for the caution of former times. By the present Orders, all that the Court requires to be satisfied of, is "that the subpœna has been duly served, and that no appearance has been entered by the defendant;" the appearance is then ordered, and under the subsequent orders, giving a plaintiff power of dispensing with an answer, an *ex parte* decree may be obtained without difficulty. There appears nothing to prevent a decree being obtained against a defendant served with a subpœna just as he is sailing to some distant part, before even he can have an opportunity of communicating with his friends in this country.

The plaintiff may still issue an attachment against a defendant for non-appearance, and if the sheriff takes him to gaol, may bring him up by habeas, or serve him with notice to appear under 1 Wm. 4, c. 36.

(E. ix.)—By 1 Wm. 4, c. 36, s. 1, it is provided, "that when an attachment shall have duly issued against any defendant, for contempt, in not answering the bill, and such defendant shall not have been taken under such writ, and the Sheriff of the county, into which such writ shall have issued, shall make a return of *non est inventus*, to the same, the Court shall upon motion, by or on behalf of the plaintiff, (notice of which shall not be required), order that the Serjeant-at-arms attending the Court, do apprehend such defendant, and bring him to the Bar of the Court, to answer his contempt; and the same proceedings may, thereupon, be had, as if such order had been made in manner heretofore in use;" and then the Act declares upon what evidence the order shall be made, which has been

followed in the present order. The 9th Order effects an important saving, by dispensing with the Serjeant-at-arms.

(F. x. and xi.)—When a party was ordered to do anything instead of serving him with a copy of the order, a writ of execution thereof issued, a copy of which was served on the party, and if he did not comply an attachment issued against him. The circumstance of the writ of execution being on parchment, and under seal, has generally procured for it more respect and attention then an order on plain paper. As every other expense, except the writ, will be incurred, the annual saving is expected to be very trifling. Doing away with an attachment for non-compliance with an order or decree, will operate prejudicially in many cases. An attachment issued without order; could be obtained at any season of the year at a very small expense; its execution was prompt, and the cost of executing it moderate, and the party issuing it had the power of controlling the process at any stage. On the contrary, the Serjeant-at-arms, requires an order to put him in motion; to obtain this, it is not sufficient that the Court is sitting, but the application must be made on a certain fixed day; the fees of the Serjeant-at-arms, where a party is taken at a distance, or where he proceeds against many persons, are so high as to make a party pause before he incurs them, and may, in many cases, operate to prevent him from proceeding. A party, in a doubtful case, might hazard the expense of an attachment (10*s.* 6*d.*) although he would not dare to put in force the expensive machinery of the Serjeant-at-arms, for, be it observed, that he is liable to the Serjeant-at-arms for his fees, whether a caption is made or not, and must look for repayment to the party against whom he is proceeding; and moreover, when once the order for the intervention of this officer has passed the lips of the Judge, the controlling power of such party ceases: for by order of

4th Nov. 1674, revived, 13th July, 1685, and 12th June, 1694, It is ordered, that after any order for a Serjeant-at-arms shall be granted by the Court, the Registrar shall, on request, draw up the said order, and deliver the same to the Serjeant-at-arms or his deputy, and no other person, they paying for the same; by which means he shall or may endeavour to apprehend the party prosecuted, and bring him into this Court to answer the said contempt, if he can; but if he cannot, his Lordship doth further order, that no order for a Serjeant-at-arms, drawn up and passed by the Registrar, be discharged, and the contempt thereupon, without the Serjeant's fees be paid to him, and a certificate under his hand testifying the same; and after the said Order being so drawn up and passed as aforesaid, no private or other agreement shall be made between the party or parties, and the person or persons so standing in contempt as aforesaid, or any other person on their or any of their behalf, without such satisfaction shall be made, and a certificate of the same shall appear to the Court (*b*).

It may further be observed, that having recourse to a Serjeant-at-arms instead of an attachment does not advance the process to the attainment of a sequestration in case of a party being taken into custody.

(G. XII.)—In cases of payment of money or transfer of stock into the name of the Accountant General, this order will increase expense, as whenever a time is limited "after service," the Accountant General will not act unless the service is made and proved.

The insertion of a time in orders and decrees appears to be of modern origin, as formerly the decree or order was to be performed forthwith.

(H. XIII.)—By 1 Wm. 4, c. 36, rule 19, it is provided, that if any party obstinately retains possession of land or other real property, after a writ of execution of a decree or

(*b*) Beam. Ord., 246.

an order for delivery of possession has been duly served, and demand of possession made, and upon an affidavit of such service of the writ of execution, and of such demand made thereunder, and a refusal to comply therewith on the part of the person against whom the writ issued, the party issuing it is at liberty, upon an affidavit of service of the writ of executon, and demand of possession and refusal, to obtain the usual order of course for the writ of assistance to issue, and that the intermediate writ of attachment and injunction farther commanding the party to deliver possession, or any other writ shall be unnecessary.

The alteration made by this Order is substituting the service of a copy of the decree or order in the place of a writ of execution thereof, thereby saving the expense of the writ of execution.

(J. XV.)—This is a most valuable alteration in the practice. In proceeding against those not parties to the suit, under the old practice, it was necessary to obtain an order for a certain thing to be done within a given time; a second order within four days or that the party might stand committed; and a third order, that such party do stand committed; whereas by this order on the service of the first order, the party can be proceeded against at once by attachment for non-compliance. It is desirable that this order should extend to Bankruptcy.

(K. XVI., XVII., XVIII., XIX.)—The consideration of these Orders falls more particularly within the province of the Equity draftsman, but it may be observed, that in many bills the plaintiff has not the means of knowing to which interrogatories the defendant will be able to answer, and that much more trouble will be required in the preparation of the interrogatories. It may also lead to multiply separate answers, than which nothing can tend more to the expense of a suit, as will appear when it is remembered that the expense of a separate answer is not confined to its preparation, but extends to the office copy, the abbreviat-

ing, and the briefs for Counsel. These Orders appear rather to provide against a system where each defendant takes a copy of the bill, and not as in reality where only one copy is taken by each defendant's Solicitor, without regard to the number of parties for whom he appears and answers.

(L. xx.)—A defendant is allowed ten weeks in a country cause, and eight weeks in a town cause to answer an original bill, or bill of revivor and supplement, and seven weeks in a country cause, and five weeks in a town cause to answer an amended bill. The increased facilities of communication between every part of England and the Metropolis, appear to justify an equal allowance of time to town and country defendants. But the country defendants may still contend for an enlarged allowance, on the grounds of his less easy access to Counsel, and of the time consumed in obtaining a dedimus, and giving six days' notice of its execution to the plaintiff, and sometimes in procuring a Messenger to take charge of the answer to the public office. When several defendants appear by one Solicitor, and are able, from their interest, to join in one answer, curtailing the time may have the effect of promoting separate answers, or of increasing the number of journies of the country Solicitor.

(M. xxi. and xxii.)—Taken in connection with the 8th Order, giving the plaintiff liberty to appear for an absent defendant, this Order invests the plaintiff with a power quite unknown to the ancient practice of the Court. Eight days after service, the plaintiff may, by the 8th Order, appear for a defendant, and eight weeks after, by this Order, may dispense with such defendant's answer, and proceed to a hearing without him, and obtain an *ex parte* absolute decree, for by the 44th of these Orders, the decree *nisi*, where defendant makes default, is converted into an absolute Order. In the case above mentioned, it is difficult to say on whom the notice, required by this Order, is to be served. Both in this and the 8th Order, there is a

great want of accuracy. In the 8th, it is not defined with whom the plaintiff may cause an appearance to be entered for defendant, whether by his own clerk in Court, or by the junior clerk in Court, and in this Order, it is not stated by whom the note is to be filed, and the service is directed to be made in the same manner as a subpœna to rejoin is now served. A subpœna to rejoin is now served through the Clerk in Court. Is this rule to be excepted from the other writs to be served on the Solicitor, and by fixing up a copy or by transmission through the post?

(N. xxiii.)—It is much to be feared that the good intentions which dictated this Order, will not be realized, and that this Order, instead of working the reformation intended, will, in many cases, produce a scource of increased expense. Supposing a plaintiff to file a bill against a number of parties answering the description of this Order, and having similar interest; according to the present practice, they might have appeared by one Solicitor, and then, however numerous, would have only taken one office copy of the bill, but what is there now to prevent a plaintiff's Solicitor from serving each of them with a copy of the bill without the interrogatories. Again, it is very common for formal parties to appear by the same Solicitor as those having the greatest interest, in such case, one copy would have sufficed, but now the interested party will take the office copy bill, and the plaintiff's Solicitor will serve the formal defendant with a copy less the interrogatories. Again, as the defendant is to be bound by the proceedings, no amendment whatever can be made in the bill without such amended bill being served on such formal defendant, and suppose the defendant to wish to answer, as the copy served did not contain the interrogatories, he must take another copy.

(O. xxiv.)—The same want of definiteness exists in this Order. In what manner is the plaintiff to cause a memorandum to be entered in the Six Clerks' Office. Binding a party by all the proceedings in a cause over which he is not

at liberty (except under the penal consequences of being visited with costs) to exercise any control, is so totally at variance with that principle of the Court of Chancery requiring that all parties concerned should be before the Court, that it must be left to time to decide as to the result of the experiment.

(P. XXV.)—What is the meaning of "such defendants shall, within the time limited by the practice of the Court for that purpose, enter an appearance?" What time is limited? A defendant is bound to appear within a certain time after service of a subpœna, but no time is limited by the practice of the Court for a defendant to appear after service of the copy, bill and notice.

(Q. XXVI.)—A defendant cannot decide on his own responsibility. In what manner is an innocent defendant to be repaid for the expense of consulting his Solicitor and Counsel, to advise him how to act on being served with copy bill. Considering the penalties in the shape of costs, it is a matter of much responsibility to advise a defendant so circumstanced.

(R. XXVII.)—What is to be understood by being served with notice of all the proceedings? Suppose a petition to be presented, is a copy of it to be served, or only a notice of a petition having been presented?

(S. XXVIII.)—What is the time limited? See remarks on twenty-sixth Order.

(T. XXIX.)—The question of the liability to pay costs under this and the 26th and 27th Orders, will produce many tough battles in Court, and may involve a Solicitor in many a question of liability between him and his client. I presume no prudent Solicitor will incur the responsibility.

(U. XXXI.)—This appears a very beneficial alteration, and it is to be wished that the Court had made an Order that the probate of a will should be sufficient, in questions touching real estate as well as concerning personal. The expense of producing an original will is frequently most grievous; and it becomes the more serious as it is

required, both at the examination of witnesses, and also in Court at the hearing of the cause.

(V. XXXII.)—This may be regarded as an experiment in the face of one of the leading principles of the Court, of having all parties before it. It remains to be seen whether the decrease in the number of parties will compensate for an increase of separate suits.

(W. XXXIII.)—Supposing a defendant on the overruling of a plea or a demurrer, to neglect to ask for time, or at the expiration of the time allowed by the Court to require further time, in each case a special application must be made to the Court, as the Master will have no jurisdiction to grant time in either. A counter application may be anticipated on behalf of the plaintiff, under the 22nd Order, for liberty to file a note. The Judges are little aware of the expense of special applications in contested suits, and when the motion cannot be speedily brought on for hearing. In a bill of costs recently taxed, the writer feels confident that the charges of only one Solicitor's attendances in Court must have exceeded fifty pounds, and the motion was by no means one involving any question of magnitude. The suitor, harassed with applications and counter-applications, will sigh for the simplicity of the old practice.

(X. XXXIV.)—Before these Orders either party could set down a demurrer or plea, and therefore there existed no cause of complaint. By this Order the plaintiff is within twelve days from the expiration of the time allowed to the defendant for filing such demurrer, (not from the time of filing,) to cause the same to be set down. A defendant has twelve days to demur; suppose demurrer filed on the fourth day, will the plaintiff not have twenty days to set it down? Why should the expense of setting down a plea or demurrer be thrown upon the plaintiff? How is this order to be complied with in vacation?

(Y. XXXV.)—The time allowed for filing a plea is the same as an answer, *viz.*, eight weeks. Suppose one filed

within one week, seven weeks will therefore remain unexpired of the time allowed for filing such plea. Under the words of the Order will not the plaintiff be entitled to the seven weeks, and the three weeks to set down the plea.

(Z. XXXVI. XXXVII. XXXVIII.)—These rules are calculated to simplify pleading, and remove from it many technical difficulties.

(A. A. XXXIX.)—This order is intended to remedy the defect of an abortive hearing, on account of the cause standing over for want of parties. Is the cause to be heard on the defendant's objection for want of parties only, as between such plaintiff and defendant, or are the co-defendants, if any, to assist in such hearing? If the point is only to be contested between the defendant raising the objection and the plaintiff, and the decision is for the plaintiff, is a co-defendant, to be bound by such decision, and precluded from raising the objection, or, suppose the answer of A. to raise the objection, and the cause to be set down on such objection, but before disposed of, that defendant B. by his answer, raises the same point; in what way is such last objection to be disposed of. The short time, *viz.* fourteen days within which the cause is to be so set down, will render the assumed case of more frequent occurrence.

(B.B. XL.)—In many cases, this order is likely to prove of benefit to the suitor, notwithstanding the absent parties will have a right to have the cause heard again; although doubtless they will frequently acquiesce in the decision pronounced in their absence.

(C. C. XLI.)—This is a very beneficial alteration; is there any objection to extending it to all bills of discovery?

(D. D. XLII.)—Query, in what manner does this alter the present practice?

(E. E. XLIII.)—This will save expense and the trouble of the attendance of witnesses.

(F. F. XLIV.)—If this Order stood alone it would appear to effect a beneficial alteration, but taken in connexion with some of the previous Orders in certain hands it may be dangerously used. By the practice before these Orders, the plaintiff took such decree *nisi*, as he could abide by, and the evidence was not entered as read; is this to be followed in case a defendant makes a default, or will the Court pronounce a decree?

(G. G. XLV.)—This appears a beneficial alteration.

(H. H. XLVI.)—It may be doubted whether this Order will work well, and whether it will not prove, in cases of solvent estates, a means of much diminishing any surplus that may remain, as the cost of the proceedings to carry it into effect are likely to be heavy, compared with the object to be attained. Can the intention of the Order be carried out without an additional application to the Court, beyond that now required?

(J. J. XLVII.)—If by taxing the costs by the Master is meant that the Solicitor of the creditor is to bring in a bill, of which the Solicitors in the cause are to take copies, and attend the taxation, this will be a most objectionable Order. The average expense of establishing an unopposed simple contract creditor's charge in the Master's Office is between 50*s.* and 60*s.*, and the expense of taxing each creditor's costs would average upwards of 40*s.* Why not allow 55*s.* to be added at the end of the creditor's charge, unless, on the allowance of the charge, the Master should direct the creditor's costs to be taxed, which would provide for cases of contested claims. By this Order, the "costs are to be added to the debt." If the assets are not sufficient to pay the debt in full, are these costs to abate, or are the costs to be added to what shall be found due to the creditor as his apportionment on the amount of his debt?

(K. K. XLVIII.)—In preparing a brief on further directions, the ordering part of decree or order of reference

and the Master's report (exclusive of the schedule) were furnished to Counsel. Will not the mode of preparing a report pursuant to this Order render it necessary that the Judge and Counsel should be furnished with copies of the proceedings before the Master?

(XLIX. and L.)—These Orders are calculated to save expense.

HINTS FOR REFORM.

In considering the question of Legal Reform nothing can afford greater pleasure than to have to speak in the past tense of the greatest grievance under which the suitor laboured in the Court of Chancery as an evil which once existed, but for which an adequate remedy has now been provided. The appointment of two additional Judges to the Court may be regarded by the suitors as the greatest boon which could have been bestowed upon them. The improvements in the practice of the Court since 1828, had removed most of the impediments which prevented a plaintiff from being able to set down his cause for hearing, and any one who will take the trouble carefully to examine the effect of these alterations will be surprised at the extensive causes of delay which they have removed. But the increased rapidity with which the cause advanced at its earlier stages only tended to incumber the already overwhelming arrear of unheard causes. In vain the Judges overtaxed their energies in endeavouring to keep down the constantly increasing accumulation. The evil strengthened

term by term and year by year, until the Solicitor could give his client no hope of obtaining any attention to his suit until two or three years after it had been set down. When funds were abundant desperate remedies were resorted to, and the opinion of the Court was sought by means of interlocutory applications. However successful these might have been in individual cases, they added another cause to the general delay. Some causes have been in the daily paper, and perhaps even partially heard, but from these sources of interruption and the pressure of other business, sometimes remained undisposed of at the end of months. What a source of vexation to the suitor, what a fertile field of delay and expense. And yet there was a hesitation about appointing additional Judges, and it is only after repeated struggles that a bill has been passed. The public have a right to the reasonable exertions of the Judges; they more than fulfilled this; they laboriously occupied themselves to a far greater extent than the suitor had a right to expect, and to the risk of injuring that calm state of mind so necessary to accurate judgment; still the result was arrear. In every other position of life the remedy would have been clear, and additional force would have been applied, but an outcry was raised at the expense; expense indeed! why, the suitor paid in further fees and refresher fees to his Counsel—in fees for attending Court to his Solicitor, in term fees, and expenses caused by abatements, and charge of interest in the shape of bills of revivor and supplement, over and over again, more than will repay every expense of the new Judges, and their Courts and Officers.

Not only was the positive delay a great evil, but the result produced on the habits of the practitioner, was equally prejudicial. All the zeal and energy which characterized the early progress of the cause might be naturally supposed to evaporate during its years of probation in the Registrar's Book, and the fire so smothered was with difficulty kindled again when the cause really came

before the Court; whereas, if the cause had obtained a speedy hearing the original impulse would have been kept in action.

There has been no subject more fully discussed than the benefit of the union of the political and judicial offices in the Lord Chancellor. It is not the intention here to continue the argument, except so far as to endeavour to show that two of the grounds for a severance of these offices have not necessarily any direct bearing upon the question. The objections alluded to, are the inconvenience sustained by the suitor on every change of the custody of the Seals; and the fact of an appeal lying frequently to a Judge of less experience in Equity than the Judge against whose decree the appeal has been lodged. That these defects call for revision is admitted on all hands; but the severance of the twofold office of the Lord Chancellor does not appear at all to follow from such a result.

Since Lord Eldon resigned, how frequently has the custody of the Great Seal changed hands; and every change has been productive of a mischief to the suitor, of which the public at large and the Legislature know but little, and of the extent of which even the Judges of the Court are only imperfectly apprized. Imagine the case of a suitor whose whole fortune is involved in litigation, the position of whose family in society, perhaps even their subsistence, is dependent upon the issue of a pending cause. Imagine him patiently watching each slow progress of the suit, sustaining himself and his children by the liberality of friends or by the dangerous aid of the money lenders. As months pass away the kindness of friends grows less warm and the usurer more hard in his exactions; but still hope,—the last, best human friend of the miserable, cheers him on, by pointing to him a not far distant period when the promises of success given him by his professional advisers shall be realized. Imagine him to have passed through weeks, months, nay, years of alternate expectations and disappointments,—one day feeling the sickening of hope deferred, another day only re-assured

to be again sunk lower in despondency. Imagine him to have survived all the delays arising from the deaths and births of parties, from bankruptcies, insolvencies, from transfers and assignments of interest; to have examined his witnesses before the examiner and before commissioners in the country, and in regions far distant from the jurisdiction of this Court. Imagine him, after he has seen his cause actually placed in the daily list for hearing, tortured in watching its eccentric motion, advancing a step one week and retrograding the next, so as sometimes to be more distant at the end than at a commencement of a term. Fancy the long desired, though dreaded, day to have arrived,—the Registrar calls the cause, the Junior opens the pleadings; the Queen's Counsel and their Junior appear in long array for plaintiffs and defendants, and day after day is consumed, and every point of evidence and of law is more than once pressed upon the attention of the Judge,—the reply closes,—judgment is promised,—hope seems already realized,—the Prime Minister resigns,—the Administration goes out,—the official functions of the Chancellor cease,—and the whole cause has to be heard again.

The profession are fully aware that this is no imaginary or overstated case, but borne out by a multitude of analogous instances. How satisfactory a remedy would it be if it was the law for a retiring Lord Chancellor, although no longer in possession of the Seals, to be enabled to give his judgment in every case which had been heard before him without the consent of parties, and such a rule would remove one of the most substantial objections to the twofold office of Lord Chancellor as at present constituted.

Another serious objection is to the appellant jurisdiction as at present existing. Nothing appears more unsatisfactory than that one man should alone have the power of reversing the deliberate judgment of another, unless it can be shown that the former must of necessity be in possession of superior judicial qualifications. The great

abilities of many of our Chancellors have tended to conceal this defect in the appellant jurisdiction, but history clearly proves the existence of other Chancellors, who were totally unfit to compete with the Masters of the Rolls of those days, either in legal experience or legal attainments. The present accession of Judges to the Court of Chancery appears to afford facilities for the appointment of a Court of Appeal more calculated to obtain the confidence of the country. It is submitted that the Lord Chancellor, the Judge against whose decree the appeal is brought, and one of the other Judges of the Court might form such a tribunal; their united judgment would give weight to their opinions, and produce uniformity of decision and practice more than compensating for the absence of the puisne Judges from their own Courts. The subject is one of paramount importance, and a rich harvest of fame must be gathered by the Judge who shall remodel the appellant jurisdiction.

The taxation of costs appears to be the subject next in importance; it is not proposed here to enter into the question of the propriety of appointing taxing officers, although the writer's opinions are decidedly opposed to such a change, on the ground that the present system is admitted to work well; is productive of no delay; and is less expensive than would be a sufficient number of taxing officers; and also from the advantage which a remuneration in proportion to the labour bestowed always possesses over payment by salary, to an officer not directly before the public. The alteration suggested is not in the officers who administer the law, but in the law itself. The principle upon which the allowance of costs to be paid by a losing party should be regulated, appears to be such a scale, that while on the one hand it shall not by its excess promote litigation, shall not, on the other, be so inadequate as to operate as a denial of justice. The adherence to charges and rules of taxation, framed upon ancient precedent, which, however applicable to former times, are

now wholly unequal to meet even the outlay of the present day, tend to fix upon the innocent party who gains his suit the most vexatious and burdensome penalties, in the shape of extra costs, and no position can be more painful to a conscientious practitioner than thus to heavily tax the purse of a client whom the Court has pronounced to be free from blame. Can anything be more calculated to depreciate a profession than the constant recurrence of such applications? A party may successfully resist an unjust claim; the claimant may be ordered to pay the winning party his costs, as between party and party; the bill of costs of the Solicitor may be so moderately charged that it cannot be impeached, and yet the innocent defendant to an unjust demand is saddled with costs, frequently to a great amount beyond those which he can recover from the plaintiff. Is not this oppression? Does it not operate as a denial of justice? In a recent case a legatee was compelled to file a bill against an executor for his legacy, which the executor defended; a decree was pronounced against the executor, and the Court marked their sense of his misconduct by ordering him to pay costs; he appealed, and was again defeated, and with costs, and yet the extra expenses payable by the plaintiff to his Solicitor were so heavy as nearly to exhaust the legacy, which was considerable.

Some of the Orders of 1828, and subsequently, have applied partial remedies to isolated instances, by increasing the costs of pleas and demurrers, amendments of bill, insufficiency of answers, and what are technically called costs of the day, but the general principle remains without remedy. This may be illustrated by a few examples.

A legatee applied to an executor to pay him his legacy; the executor refuses, and the legatee consults a Solicitor, and instructs him to file a bill; the Solicitor requires either an extract, or a copy of the will; the legatee has neither; the Solicitor either attends and makes a search, and carries away a sufficient extract, or procures a copy of

the will. If his costs are taxed, as between party and party, the items for the extract, or copy of the will, and his attendance for same, are taken off, on the ground that they are included in the 13*s.* 4*d.* allowed to him as instructions for bill. In vain it is urged upon the taxing officer that the search and extract were necessary; perhaps he may tell the Solicitor that the client ought to have done it himself, although as incapable of understanding a legal instrument as of swimming across the Thames; or the necessity of a copy of the will may be conceded, from the suit depending upon a nice construction of the same, and yet the taxing officer can give no better reason for the disallowance than that the item is not costs of suit as between party and party. The same rule of taxation applies as to all deeds. The bill being filed, it is necessary to serve a subpœna on defendants living at remote residences, one in Yorkshire, another in Cornwall, a third in Sussex, and a fourth at Carlisle; to effect this it is necessary to employ correspondents at each place, and unless the defendant lives near the correspondent, an average charge of 30*s.* at least is made for each service, or 6*l.* on the four defendants. Of this 5*l.* is taxed off as between party and party, the charge for each country service being 5*s.*, and although proof may be tendered of the impossibility that the service could have been effected in any cheaper way, the sufferer must rest satisfied with the assurance that 5*s.* is all that can be allowed for serving a subpœna even in a country cause.

A country defendant neglects to enter his appearance; it becomes necessary to issue an attachment against him. The country correspondent is applied to for an affidavit of service of subpœna, which is obtained at an expense of not less than 15*s.*; this affidavit is taken to the Clerk in Court, who files it, and makes out an attachment at an expense of 7*s.* 2*d.* for attachment, (with an extra charge of 3*s.* 6*d.* if a private seal,) and 3*s.* 4*d.* for filing the affidavit; the attachment is then put into the sheriff's hands, and the party seldom

obtains the execution of it under *2l. 2s.* Thus the Solicitor has disbursed about *3l. 7s. 6d.*, and all he can recover from the defendant is *13s. 8d.* In some cases these costs amount to four or five times as much. A defendant puts in an insufficient answer, and takes counsel before the Master to support it. On a question of pleading a Solicitor could hardly with prudence avoid employing Counsel; a copy of the bill, answer, and exceptions, are made for Counsel, *3l. 5s. 6d.* is paid him for his first attendance, and two or three guineas for every subsequent attendance. No practical man could say that the employment of Counsel was unnecessary, but it is disallowed as between party and party.

The case happens to be involved, and the pleadings are laid before Counsel to advise on evidence, and a fee, varying from three to five guineas, is paid to such Counsel, which is also disallowed. (*c*) The cause turns upon the construction of a deed or will: a copy is furnished to Counsel, or even by order to the Judge, yet both are disallowed as between party and party.

Custom has rendered a consultation before hearing in an involved case so universal, that no Solicitor would venture to neglect it, yet it is disallowed in every case between party and party.

A party is ordered to do a certain act, and a writ of execution of the order is served upon him, unless he is brought into contempt by an attachment, the costs of the writ of execution are not allowed as costs in the cause. Retainers, although allowed at law, are disallowed in Chancery.

Suppose scientific evidence to be required, whether before or after decree; for example, that of a surveyor or valuer of lands or houses, as to repairs; of an engineer, in a mining cause, although the question is entirely decided on their evidence, yet the charges made by them for preparing

(c) In the last assumed cases the Solicitor's fees have also to be added.

themselves to give evidence, are disallowed. It frequently happens that a Master entirely founds his report upon the testimony of such scientific evidence, reciting it in his report, and refusing to entertain the question without it.

Suppose the Master decides upon allowing interrogatories for the examination of a defendant, a warrant is taken out for him to put in his examination, and a time is fixed for that purpose. If the examination be not put in within time, or an extended time granted by the Master, he issues a certificate of default, upon which the party applies for the four day *nisi* order, for committal. If the examination be filed before this last order is made absolute, not only are the costs of obtaining it not personally payable by the party to be examined, but also are not costs of suit as between party and party.

Indeed, instances of this kind so crowd upon the memory, that it is a hopeless task to attempt to enumerate them; and, doubtless, the recollection of every professional reader will furnish him with numerous other cases within his own practice. To attempt then to apply a remedy to each individual case of hardship appears impossible, and the only course that suggests itself is, that, as a general rule, all costs should be directed to be taxed as between Solicitor and client, the Court reserving to itself the power in certain cases, only to award costs as between party and party. The exercise of this latter discretion would operate as a powerful check against vexatious or frivolous litigation. It should be observed, that costs as between Solicitor and client, exclude many allowances which a Solicitor could claim against his client; thus, a Solicitor could fairly claim against his client the costs occasioned by his contempt in not putting in his answer, or by putting in an insufficient answer on account of the want of proper instructions, but in neither case could the client compel an opponent to pay such costs even as between Solicitor and client. This scale of costs,

while, on the one hand, it would leave untouched all objections to costs incurred ignorantly, or unwittingly, or extravagantly, would relieve the taxing officer from the necessity of disallowing charges which he felt had been properly incurred, and remove from the system the stigma of inflicting on an innocent and successful party the burden of heavy extra costs. In the case of fixed personal costs, payable upon given proceedings, they would require to be altered in detail.

In the Orders of 1841, an attempt is made to save expense by decreasing the number of parties and rendering it unnecessary for others to take active measures in certain events. Amongst the highest class of practitioners much of the evil sought to be remedied has been avoided, by their uniting many defendants in one defence by the same Solicitor. It is submitted that the greatest safeguard to the suitor is by keeping up the character of the profession; for neither orders nor vigilance can completely defeat attempts to add to costs, in cases where the practitioner wholly regards the amount of his bill, and considers his client only in one light, *viz.*, as part of his stock in trade.

There is nothing which so much tends to produce such a result, particularly amongst the young, as the dissimilarity between the charges made to clients by the most respectable offices and those allowed by the rules of taxation. It is, and should be, an honest subject of pride in the practitioner so to frame his charges that the disallowance may be trivial; but in certain cases, particularly in agency matters, where the profits are divided between the principal and agent, this can scarcely be done without operating unjustly on the solicitor, inasmuch as some allowances are an inadequate return for the labor bestowed. There can be no doubt that the inferiority of pay to the agency Solicitor operates prejudicially, and that it requires amendment. When it is recollected that

neither the agent nor the country Solicitor is allowed one penny for the extensive correspondence which takes place between them, notwithstanding the time consumed, it should predispose the Court to look favourably on their other fees; and yet these, in many proceedings, are so low as to yield scarce any profit. The fee for drawing an affidavit is 1*s.* per folio; for engrossing 4*d.* per folio. The town Solicitor does not find this by any means an extravagant allowance for the pains required in its preparation; and when it comes to be divided between the country and town Solicitors, thereby occasioning the necessity of a second copy, the fee is far too small. In country suits, in every case of drawing, an extra fair copy ought at least to be allowed, and the term fee, and fee for letters, &c. to the country Solicitor should be increased. The extent to which these notes have already reached prevent the subject from being further continued; otherwise many other instances of disproportionate allowance might be shown. But before concluding, the Masters' Offices demand a few words.

There is every prospect that the pressure of business which the increased number of Judges is calculated to remove from the Courts will be transferred to the Masters' Offices. To render them equal to the discharge of this inundation of duty, it seems essential than one additional clerk should be appointed in each office to assist the chief clerk. This has been tried at least in one office, the suitor has obtained the benefit although the expense was borne by the clerk. Every consideration of good policy and humanity should co-operate to make the situation of the outer clerks permanent, unless for misconduct, their present uncertain tenure of office is much to be deplored.

There seems to exist a general feeling in the profession that a partial payment by fees should be returned to in the Masters' Offices. The suitor is likely to suffer severely for want of this stimulus. On the subject of the Masters'

Offices the reader is referred to "*Facts and Suggestions respecting the Masters' Offices*," which publication contains much valuable practical information.

The system under which the fee fund is collected in all the departments in the Court of Chancery is very discreditable to the superintending vigilance of the Court. Of individual want of energy or trustworthiness, not a suspicion exists, but would it not disgrace any mercantile business if money were allowed to be collected and accounts passed without even an attempt to check or control their accuracy?

The 16th and 17th Orders of 1828 require to be remodelled.

THE END.

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